



Date: 11th June 2015

Q246

Exceptions and limitations to copyright protection for libraries, archives and education and research institutions

Responsible Reporters: by Sarah MATHESON, Reporter General John OSHA and Anne Marie VERSCHUUR, Deputy Reporters General Yusuke INUI, Ari LAAKKONEN and Ralph NACK Assistants to the Reporter General

National/Regional Group	Indonesia
Contributors name(s)	Cita CITRAWINDA and Cita CITRAWINDA
e-Mail contact	cita_p@ccpassociates.com
Date	04-05-2015

I. Current law and practice

1) Does your law provide for exceptions or limitations to copyright protection for libraries and archives?

yes

If so, please provide details of such exceptions or limitations, including in relation to the following activities::

a) reproduction and/or distribution for the purpose of preservation or replacement;

yes

Please comment:

Reproduction is done for maintenance, replacement copies required, or replacement copy in case the copy is lost, damaged, or destroyed from the permanent collection in the library or other archival institutions provided that:

1. library or archives is not possible to obtain a copy under reasonable conditions; or
2. copying is done separately or if it is done repeatedly, making of such copies shall constitute unrelated incident.

b) reproduction and/or distribution for the purpose of interlibrary lending;

yes

Please comment:

reproduction for the purpose of communication or information exchange inter-libraries, inter-

institutional archives, as well as between libraries and archives.

c) reproduction and/or distribution for the purpose of providing copies (either in a physical or a digital form) to users of libraries or archives; or

no

Please comment:

reproduction and/or distribution for the purpose of providing copies (either in a physical or a digital form) to users of libraries or archives are not available

d) any other activities, and if so, what activities?

no

Please comment:

other activities are not available

2) Do any of these exceptions or limitations apply to libraries, archives or other organizations (e.g. museums) generally, or only to certain organizations (e.g. public and/or commercial libraries and archives)? If so, which organizations?

These exceptions or limitations apply only to each library and archives which are not for commercial purposes, however, the limitations are not including other organizations (e.g. museums) generally as well as commercial libraries and archives.

3) Are there any conditions as to the type or scope of any permitted activities (e.g. number of copies that may be created, whether only a portion of a work may be used, whether certain forms of reproduction (e.g. digital reproduction) are excluded)? If so, please explain the conditions.

Each library or archives which are not for commercial purposes may make one (1) copy of Creation or part of a work without permission of the Author or the Copyright Holder. Copying is done for maintenance, replacement copies required, or replacement copy in case the copy is lost, damaged, or destroyed from the permanent collection in the library or other archival institutions provided that:

1. library or archives is not possible to obtain a copy under reasonable conditions; or
2. copying is done separately or if it is done repeatedly, making of such copies shall constitute unrelated incident.

4) Are there any conditions as to the type of copyrighted work that may be used (e.g. lawfully created copies, copies existing in the library's or archive's collection, published works)? If so, please explain the conditions.

- a. articles in various fields which have already been published in the print media or electronic media unless a copy of which is provided by the creator, or relating to broadcasting or communication of the work;
- b. report of the actual events or excerpt of works that are seen or heard in certain situation; and
- c. scientific papers, speeches, lectures, or other similar works presented to the public.

5) Does your law provide for exceptions or limitations to copyright protection for education and research

institutions?	
yes	If so, please provide details of such exceptions or limitations, including in relation to the following activities::
a) performance and/or display for educational purposes;	yes Please comment:
b) reproduction and/or distribution for educational purposes (e.g. preparation of course packs, compilations or anthologies, exams);	yes Please comment:
c) making translations;	yes Please comment:
d) making available in digital networks for educational purposes (e.g. uploading course packs onto on-line platforms, compilations or anthologies, providing distance education);	yes Please comment:
e) reproduction and/or distribution for research purposes; or	yes Please comment:
f) any other activities, and if so, what activities?	yes if so, what activities?:
6) Do any of these exceptions or limitations apply to educational and research institutions generally (e.g. non-profit institutions), or only to certain institutions? If so, which institutions?	Yes, these exceptions or limitations apply to educational and research institutions in general.
7) Are there any conditions as to the type or scope of the activities and the persons who may engage in such activities (e.g. number of copies that may be created, whether only a portion of a work may be used, whether both a teacher's and student's performance is covered, or only one or the other)? If so, please explain the conditions.	No conditions as to the type or scope of the activities and the persons who may engage in such activities, and there is no provisions as to whether only a portion of a work may be used, whether both a teacher's and student's performance is covered, or only one or the other.
8) Are there any conditions as to the type of copyrighted work that may be used (e.g. only lawfully created copies, only certain kinds of copyrighted works)? If so, please explain the conditions.	

The use, retrieval, reproduction, and/or alteration of a copyrighted work in all or a substantial portion is not considered a violation of Copyright if the source is mentioned or included in full for the purposes of accession to facilitate the work for the blind, people with impaired vision or limitations in reading, and/or users of Braille, audio books, or other means, except for commercial purposes.

For the questions below, please provide an answer for each exception or limitation mentioned above.

9) Is there any statutory provision that specifically provides for such exception or limitation? Is it alternatively or additionally recognized in case law? If neither, does your jurisdiction have a more general or broad exception or limitation that is interpreted as covering such specific exception or limitation?

Yes, there is a statutory provision specifically provides for such exception or limitation.

Article 43 Copyright Law stipulates that act which is not considered a violation of Copyright include:

- a. announcements, distribution, communication, and/or reproduction of symbol of the state and song nationality according to their original nature
- b. announcements, distribution, communication, and/or reproduction of everything done by or/on behalf of the government, unless otherwise protected by legislation, statement on such work, or when such work is done on the announcement, Distribution, communication, and/or reproduction;
- c. actual news retrieval, either in whole or in part from news agency, broadcasting organization, and newspaper or other similar source is fully acknowledge; or
- d. manufacture and distribution of media content copyright information and communication technology is not commercial and/or beneficial Creator or related parties, or the Creator expressed no objection to the creation and dissemination.
- e. reproduction, announcements, and/or distribution of Images of President, Vice President, former President, former Vice President, National Hero, heads of state institutions, leadership ministries/non-ministerial government agencies, and/or head area with regard dignity and fairness in accordance with the provisions of the legislation.

It is not yet tested in case law. Our jurisdiction has more general or broad exception or limitation.

Article 44 (1) Copyright Law stipulates that use, retrieval, multiplication, and/or alteration of a work and/or products Rights Related in all or a substantial portion is not considered a violation of Copyright if the source is mentioned or included in full for the purpose of:

- a. education, research, scientific writing, report writing, criticism or review a problem unreasonably prejudice the legitimate interests of the author or rights holder Copyright;
- a. security and governance, legislative, and judicial;
- b. lectures are only for purposes of education and science; or
- c. performances or performances that are free with no adverse conditions interest of the Creator.

10) Does your law adopt the Three-Step Test (or equivalent wording) in relation to such exception or limitation?

Our law adopt the Three-Step Test, and the reproduction of a copyrighted work is permissible:

- a. in certain special cases;
- b. when the reproduction does not conflict with a normal exploitation of the work; and
- c. when the reproduction does not unreasonably prejudice the legitimate interests of the author.

11) Is use under the exception or limitation permitted automatically (without any further action), or must certain criteria be fulfilled/procedure(s) followed (e.g. seeking a compulsory licence)? If it is the latter, please explain the criteria/procedure(s).

Yes, the government can make announcements, distribution, or communication of works through radio, television and/or other means for the national interest without permission of the copyright holder, with the obligation for remuneration to the copyright holder.

Anyone can apply for a compulsory license on works in the field of science and literature referred to a compulsory license to carry out the translation and/or reproduction of a work in science and literature which are given based on the decision of the Minister upon request for the purposes of education and/or science and research and development activities.

12) Is remuneration payable for use under such exception or limitation? If so, how is the amount of remuneration determined or calculated? Who is liable for making such payment, and to whom must such payment be made?

Yes, the remuneration is payable for use under such exception. No specific provisions regarding the amount of remuneration and who is liable for making such payment as well as to whom such payment must be made.

13) Is there any special treatment for orphan works for use within such exception or limitation? If so please explain.

In the event that author of a work is unknown and the work has not been published, the State shall hold the copyright on such a work for the interest of the author. If a work has been published and the author of which is unknown or the name printed on such work is only a pseudonym, the publisher shall hold the copyright on the work for the interest of the author. If a work has been published and the author and/or the publisher of which are unknown, the state shall hold the copyright on such a work for the interest of the author.

14) Does the law of your jurisdiction allow the exception or limitation to be overridden by contract?

The contract cannot be made against the prevailing law. There are some exceptions that are stipulated on Article 121 and Article 122 of Law Number 28 Year 2014 Regarding Copyright.

15) Other than what is provided in the law of your jurisdiction, are there any efforts by private organizations (such as a private licensing organizations) to address use by libraries, archives and educational and research institutions?

yes

If so, please explain those efforts.:

Yes, there is an Indonesia Reproduction Rights Foundation (Yayasan Reproduksi Cipta Indonesia) established on November 22, 2009. YRCI is a private licensing organization representing the authors and publishers in collecting royalties from users. However, up to this moment the YRCI is still in the process of building a cooperation with libraries, archives and educational and research institutions.

II. Policy considerations and proposals for improvements of the current law

16) Should there be any exceptions or limitations to copyright protection for libraries and archives?

yes

If yes, in relation to what activities?:

Our new Copyright Law Number 28 of 2014 already covered provisions regarding exceptions or limitations to copyright protection for libraries and archives.

17) Should there be any exceptions or limitations to copyright protection for education and research institutions?

yes

If yes, in relation to what activities? :

Our new Copyright Law Number 28 of 2014 already covered provisions regarding exceptions or limitations to copyright protection for education and research institutions.

18) Is the Three-Step Test a useful test for determining any exceptions or limitations to copyright protection?

yes

Why?:

Yes, the Three-Step Test is a useful test for determining any exceptions or limitations to copyright protection as the reproduction would potentially conflict with a normal exploitation of the work and the reproduction does unreasonably prejudice the legitimate interests of the author.

19) Should the exception or limitation be capable of being overridden by contract? Why? Why not?

Yes, the exception or limitation should be capable of being overridden by contract as any works can be reproduced provided there is a permission of the Author or his heirs or the recipient of his testament.

20) Should remuneration be payable for any of the activities described in 16) and 17) above? Why? Why not?

Yes, the remuneration should be payable for any of the activities described in 16) and 17) as any works resulted for education and research institutions involved considerable efforts of the author in terms of time, energy and money spent for the works.

21) How can your current law as it applies to exceptions and limitations to copyright protection for libraries,

archives and educational and research institutions be improved?

The new Copyright Law became effective on October 16, 2014 and already covered new provisions to exceptions and limitations to copyright protection for libraries, archives and educational and research institutions, however, there is no clear elaboration of the exceptions and limitations.

III. Proposals for harmonisation

22) Is harmonisation in this area desirable?

yes

Please comment:

If yes, please respond to the following questions without regard to your national or regional laws. Even if no, please address the following questions to the extent you consider your national or regional laws could be improved.

23) If your answer to question 16) or 17) is no, should this be explicitly set out in any international treaty/convention?

24) If yes to question 16):

a) to what libraries, archives and other organizations should these exceptions or limitations apply;

private libraries, archives and other private organizations.

b) to what activities should these exceptions or limitations apply;

the exceptions or limitations should be applied among others to profitable private organizations, lectures for purposes of education and science.

c) under what conditions should the activities be undertaken or the copyrighted work used?

25) If yes to question 17):

a) to what educational and research institutions should these exceptions or limitations apply;

b) to what activities should these exceptions or limitations apply;

c) under what conditions should the activities be undertaken or the copyrighted work be used?

For the questions below, please provide an answer for each exception or limitation mentioned above (as applicable).

26) Should use under the exception or limitation be permitted automatically (without any further action), or should certain criteria or procedure(s) be required? If so, what criteria/procedure(s)?

27) How should any remuneration for use that falls under such exception or limitation be determined or calculated? Who should be liable for making such payment, and to whom should such payment be

made?

28) What special treatment, if any, should there be for use of orphan works within such exception or limitation?

29) In what circumstances should the exception or limitation be capable of being overridden by contract?

The exception or limitation be capable of being overridden by contract provided that there is a permission given by the copyright holder/owner.

30) How should any efforts by private organisations to address use by libraries, archives and educational and research institutions, be reconciled with any exception or limitation provided by law?

Private organizations should reconcile with any exception or limitation to address use by libraries, archives and educational and research institutions as long as the reproduction does not unreasonably prejudice the legitimate interests of the author.

Summary

Please comment on any additional issues concerning exceptions and limitations to copyright protection for libraries, archives and educational and research institutions you consider relevant to this Working Question.